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IN THE

Supreme Court of the United States

October Term, 1973.

No. 73-469.

HARRIET SIGNER,

Petitioner,

v.

TRUSTEES OF THE PROPERTY OF PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR,

Respondents.

PETITIONER'S REPLY BRIEF.

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PETITIONER'S REPLY BRIEF.

Respondents' brief was received by the Attorney for the Petitioner on October 1, 1973. It contains inaccurate and misleading statements relating to the paramount issues presented to this Court so that Petitioner's attorney deems it appropriate to call this Court's attention to same.

(1) On page 2 of Respondents' brief the following conclusory statement is made:

> "All the contentions raised by the Petition for Certiorari have been fully considered by the Courts below and disposed of adversely to Petitioner in accordance with controlling principles established by this Court and the Circuit Courts of Appeals."

The above statement is not only inaccurate but misleading without support in the record of the entire proceeding in the District Court and in the Court of Appeals below.

The fundamental and important constitutional issue was first presented by Petitioner in her class action complaint in the District Court (Document 1975) to which no answer was interposed. On the motion of Respondents, the District Court dismissed the class action without a hearing on the merits, based on three untenable grounds (Appendix "A" 5). No consideration whatever was given or even mentioned in the District Court opinion and order (Appendix "A") pertaining to the constitutional issue.

On the appeal to the Court of Appeals below, the principal issue raised by the Petitioner was "the taking and diverting by the respondents of the rents and income from the non-rail properties subject to the lien of the bondholders mortgage, in violation of the Fifth Amendment to the Constitution." Respondents' brief submitted to the Court of Appeals below is completely silent on this vital issue. The Judgment order of the Court of Appeals (Appendix "B" 7a) is based on two other unrelated appeals, wherein the only issue involved was the sale of non-rail properties. It clearly appears that the Court of Appeals did not consider, mention or pass upon the constitutional issues presented. Under these circumstances, the above quoted statement in Respondents' brief is entirely without support in the record.

(2) Another important inaccuracy appears on page 7a of Respondents' brief, where the following is stated:

> "However, a second Frazier-Lemke Act was passed in 1935, and its constitutionality was upheld in Wright v. Vinton Branch, 300 U. S. 440 (1937) (not cited or referred to in the Signer brief)."

The above quoted statement is misleading and erroneous by reason of the definite assertion on page 11 of Petitioner's brief which states:

"The principle of law above quoted was followed by this Court in Wright v. Mountain Trust Bank, 300 U. S. 400-470 where the new amended Frazier-Lemke Act was held valid because it was free from the objectionable features which had been held fatal and unconstitutional to the original act."

(3) There is annexed to Respondents' brief (10a) a prepared document titled "Excerpt from opinion of the Third Circuit June 14, 1973," which is misleading. These three selected excerpts are extracted out of the context of a 24 page printed opinion rendered by the Third Circuit on June 14, 1973, in eleven unrelated appeals which only involved the proposed sale of four office buildings. The vital constitutional issues presented here, were not referred to, mentioned or raised by any party in all the eleven appeals. It is to be noted that the attorneys for the Respondents here, also appeared as the attorneys for the Appellees in all the eleven unrelated appeals. Respondents' exhibit (10a) set forth in their brief beclouds the issues and leads to confusion with the Judgment and Order of the Third Circuit (Appendix "B" 7a) *dated June 22, 1973* which Petitioner seeks to be reviewed by this Court.

It is therefore submitted that exhibit (10a) annexed to Respondents' brief should be disregarded by the Court.

Respectfully submitted,

MAX ROTHENBERG,
Attorney for Petitioner.

Dated October 4, 1973.